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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/787,922      | 06/13/2001  | Karin Angela Hing    | HING3001/REF        | 8656             |

7590 04/01/2005  
Bacon & Thomas  
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Alexandria, VA 22314

|                   |              |
|-------------------|--------------|
| EXAMINER          |              |
| GRIFFIN, STEVEN P |              |
| ART UNIT          | PAPER NUMBER |
| 1731              |              |

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                                 |                   |              |  |
|---------------------------------|-------------------|--------------|--|
| <b>Communication Re: Appeal</b> | Application No.   | Applicant(s) |  |
|                                 | 09/787,922        | HING ET AL.  |  |
|                                 | Examiner          | Art Unit     |  |
|                                 | Steven P. Griffin | 1731         |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on \_\_\_\_\_ is not acceptable because:
  - (a) ☐ it was not timely filed.
  - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
  - (c) ☐ the appeal fee received on \_\_\_\_\_ was not timely filed.
  - (d) ☐ the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$\_\_\_\_\_.
  - (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
  - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.
2. ☐ The appeal brief filed on \_\_\_\_\_ is NOT acceptable for the reason(s) indicated below:
  - (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
  - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
  - (c) ☐ the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$\_\_\_\_\_.

**The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).**

3. ☒ The appeal in this application is DISMISSED because:
  - (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
  - (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
  - (c) ☒ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on 8 March 2005.
  - (d) ☐ other: \_\_\_\_\_.
4. ☒ Because of the dismissal of the appeal, this application:
  - (a) ☒ is abandoned because there are no allowed claims.
  - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
  - (c) ☐ is before the examiner for consideration.

  
 STEVEN P. GRIFFIN  
 SUPERVISORY PATENT EXAMINER  
 TECHNOLOGY CENTER 1700

*HL*


Art Unit: 1731

A request for continued examination under 37 CFR 1.114 was filed in this application on 3/8/05, after appeal to the Board of Patent Appeals and Interferences. Therefore, the appeal has been withdrawn pursuant to 37 CFR 1.114. The request, however, lacks the fee required by 37 CFR 1.17(e) and/or the submission required by 37 CFR 1.114. Since the proceedings as to the rejected claims are considered terminated, and no claim is allowed, the application is **abandoned**. See MPEP 1215.01.

The submission filed with the request for continued examination fails to comply with 37 CFR 1.114(c). In this case, since only an Information Disclosure Statement was filed without a response which is responsive to the last Outstanding Office Action (the Final Rejection mailed 3/25/03) it is not deemed as a proper submission which is responsive within the meaning of 37 CFR 1.111 to the last outstanding Office Action. As set forth in MPEP 1215.01:

*"An appeal brief or reply brief (or related papers) is not a submission under 37 CFR 1.114, unless the transmittal letter of the RCE contains a statement that incorporates by reference the arguments in a previously filed appeal brief or reply brief. See MPEP § 706.07(h), paragraph II. The filing of an RCE will be treated as a withdrawal of the appeal by the applicant, regardless of whether the RCE includes the appropriate fee or a submission. **Therefore, when an RCE is filed without the appropriate fee or a submission in an application that has no allowed claims, the application will be considered abandoned.** To avoid abandonment, the RCE should be filed in compliance with 37 CFR 1.114. See MPEP § 706.07(h), paragraphs I-II." (emphasis added)*

Any inquiry concerning this communication should be directed to Steven P. Griffin at telephone number (571) 272-1189.

  
Steven P. Griffin  
Supervisory Patent Examiner  
Art Unit 1731